

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES E. THOMAS,
Petitioner,

No. C 09-03760 SBA (PR)

ORDER OF DISMISSAL

v.

J. WALKER, Warden,
Respondent.

This action was opened in error when the Court received a habeas petition form from Petitioner that was intended to be filed in a previously-filed action -- Case No. C 09-3451 SBA (PR). Petitioner had only filed a proposed order granting him an extension of time to file his habeas petition in Case No. C 09-3451 SBA (PR); therefore, the Clerk of the Court sent a notice to Petitioner informing him that his action could not go forward until he filed with the Court a habeas petition form, completed in full, within thirty days or his action would be dismissed. He was also sent another notice in Case No. C 09-3451 SBA (PR) directing him to either pay the filing fee or filed a completed prisoner's in forma pauperis application. The Clerk of the Court sent Petitioner a blank in forma pauperis application and told him that he must pay the fee or return the completed application within thirty days or his action would be dismissed.

Petitioner completed and filed a habeas petition form along with an in forma pauperis application and other documents; however, he did not indicate that they were to be filed in Case No. C 09-3451 SBA (PR). Therefore, as mentioned above, a new action was opened.

Petitioner currently has two separate habeas actions pending, although he meant to file only one action. Accordingly, the Clerk is directed to remove Petitioner's habeas petition form from this

1 action along with his in forma pauperis application and all other documents filed by Petitioner. The
2 Clerk is then directed to file them in his previously-filed action, Case No. C 09-3451 SBA (PR).
3 The Clerk is further directed to mark his petition, in forma pauperis application and all other
4 documents as filed on the dates they were received by the Court. The Court will review his petition,
5 in forma pauperis application, and any other pending motions in a separate written Order in Case
6 No. C 09-3451 SBA (PR).

7 The present action is DISMISSED because it was opened in error. No filing fee is due. The
8 Clerk shall close the file.

9 IT IS SO ORDERED.

10 DATED: 9/4/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JAMES EDWARD THOMAS,

5 Plaintiff,

6 v.

7 JAMES WALKER et al,

8 Defendant.

Case Number: CV09-03760 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on September 9, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 James Edward Thomas F-21197
16 California State Prison - Sacramento/Folsom
17 P.O. Box 290066
18 Represa, CA 95671-0066

19 Dated: September 9, 2009

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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